

**Comments of the WIEB High-Level Radioactive Waste Committee on DOE's
November 24, 1997 Draft Request for Proposals (RFP) for the Acquisition of
Waste Acceptance and Transportation Services for the Office of Civilian
Radioactive Waste Management**



***Western Interstate
Energy Board/* WIEB**

February 12, 1998

Lake Barrett, Acting Director
Office of Civilian Radioactive Waste Management
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Dear Mr. Barrett:

Enclosed are the comments of the Western Interstate Energy Board's High-Level Radioactive Waste Committee (the Committee) on the Department of Energy's November 24, 1997 *Draft Request for Proposals (RFP) for the Acquisition of Waste Acceptance and Transportation Services for the Office of Civilian Radioactive Waste Management*. The Committee finds the latest version of the RFP to be an improvement over OCRWM's previous draft, which was released in December 1996. The Committee is especially pleased with DOE's general statement in the current RFP that it will retain responsibility for policy decisions, stakeholder relations, and implementing Section 180(c) of the NWPA. As the Committee has stated on numerous prior occasions, these responsibilities cannot properly be delegated to a private contractor.

However, the Committee remains highly concerned that many critical policy decisions will be improperly delegated to the contractor. For example, although the RFP states generally that DOE will remain responsible for policy decisions and stakeholder relations, the responsibility for selecting modes, routes and casks as well as the development of institutional plans is placed in the hands of the Regional Servicing

Contractor(s). The Committee believes that a transportation system designed in this fashion will undermine public confidence and could jeopardize the safety of citizens along transportation corridors.

We therefore request that OCRWM release another draft of the RFP clarifying that DOE will not delegate to a private contractor the responsibility for developing institutional plans, selecting transportation modes and routes, preparing an environmental impact statement addressing transportation concerns, or selecting transportation casks. In addition, the Committee requests that OCRWM include in its next draft of the RFP a route selection time line which clearly establishes that States will have sufficient time to adjust highway routes, if necessary, and that NWPA Section 180(c) funds will be provided to states and tribes no later than three years prior to the start of shipments. The Committee, along with DOE's three other regional cooperative agreement groups, also recommends that OCRWM follow the example set by the Department's WIPP program by working extensively with states and tribes to develop a transportation safety program implementation guide for NWPA shipments.

Sincerely,

[signed]

Ken Niles, Co-Chair
High-Level Radioactive Waste Committee

[signed]

Captain Allan Turner, Co-Chair
High-Level Radioactive Waste Committee

Comments of the High-Level Radioactive Waste Committee of the Western Interstate Energy Board (WIEB) on DOE's November 24, 1997 Draft Request for Proposals (RFP) for the Acquisition of Waste Acceptance and Transportation Services for the Office of Civilian Radioactive Waste Management

The High-Level Radioactive Waste Committee of the Western Interstate Energy Board (the Committee) is pleased to provide the Department of Energy's Office of Civilian Radioactive Waste Management (OCRWM) with the following comments on the agency's November 24, 1997 *Draft Request for Proposals (RFP) for the Acquisition of Waste Acceptance and Transportation Services for the Office of Civilian Radioactive Waste Management*. These comments build upon the comments

submitted by the Committee on DOE's previous draft of the RFP released in December 1996. While the Committee believes that progress has been made by DOE in the current draft of the RFP, critical deficiencies remain. The Committee therefore requests that DOE release another draft of the RFP reflecting the latest series of stakeholder comments.

1) Interaction with States and Tribes

The Committee is pleased with OCRWM's statement in the RFP that "[t]he DOE will retain responsibility for policy decisions, stakeholder relations, and implementing Section 180(c) of the NWPA. These activities will not be delegated to the RSC(s)." (RFP, C-1) As the Committee stated in its comments to OCRWM on the previous draft of the RFP, the Committee strongly believes that it is DOE's responsibility to secure the public's confidence in its NWPA transportation program by demonstrating that it will provide strong guidance and supervision of its contractors and by taking clear responsibility for interacting with states and tribes regarding its nuclear waste transportation program.

The RFP, however, also states that the RSCs "shall prepare a Communications and Outreach Plan that describes how the RSC will communicate and interact with participating State, Tribal, and local government officials, including regional cooperative agreement groups." (RFP, C-14) The RFP also states that DOE will make the RSC plan available to "appropriate parties" along the transportation routes and "seek their comments on the Plan." The Committee believes that these provisions in the RFP indicate OCRWM's failure to assume its responsibilities in producing its *own* institutional plans in cooperation with states and tribes.

While DOE's statement in the RFP reaffirming its responsibility for interacting with stakeholders is certainly a positive step, the Committee is greatly concerned that the development of institutional plans, which are at the heart of any successful program for interacting with states and tribes, will be delegated to a private contractor. The Committee reemphasizes that the creation of institutional plans are also a federal responsibility. DOE should therefore, in consultation with affected states and tribes, design its own institutional plans, including elements such as information dissemination, participation in and/or conduct of meetings, public forums, training drills and exercises, emergency communications, and operational communications. Any private contractor which DOE chooses to utilize should then be contractually required to follow the provisions contained in DOE's institutional plan.

2) Modal Choice

As the Committee has stated numerous times in the past, the decision on modal choice for NWPA shipments must be made by DOE in consultation with affected states and tribes. The Committee believes that DOE's statement in the RFP that "[t]he RSC shall provide all transportation services to include heavy haul and inter-modal transfer services required to make maximum use of rail shipments..." (RFP, C-5) is a positive step in removing the contractor from the role of determining which mode of transportation will be used for NWPA shipments. However, this appears to be the only statement in the RFP with regard to modal selection.

Beyond the critical issue of ensuring that modal decisions are removed from the contractor's purview, the Committee believes that DOE must first come to a formal decision concerning which mode is safest. In this regard, DOE must provide support for any decision it makes to select rail as the NWPA mode of choice. To aid in making its decision, DOE should call upon the Department of Transportation to complete its now long overdue transportation "Mode and Route" study, which was mandated by Congress to be completed years ago. If this study remains unavailable, or if it fails to adequately address key issues with regard to modal selection, then DOE must conduct its own analysis comparing transportation modes. Without such critical information to justify the safety benefits of choosing between rail and highway shipping modes, neither DOE nor stakeholders can truly make an informed decision concerning the safest choice of mode for NWPA shipments.

The Committee generally supports the use of rail, since it would serve to reduce the number of radioactive waste shipments traveling through western states. However, the Committee believes that ensuring the safety of NWPA shipments dictates that the mandatory use of dedicated/special trains, with appropriate safeguards such as speed limit restrictions, should be incorporated into any decision to utilize rail as the primary mode of transport. While the RFP mentions that the RSCs are to include "consideration of the use of special train service" (RFP, C-13) in their Transportation Plans, the Committee believes that this direction from DOE to the RSCs is insufficient. If rail is to be the mode of choice, DOE must clearly provide in the RFP that dedicated/special trains must be used by the RSCs in transporting NWPA shipments.

3) Route Selection

The Committee reemphasizes its comments on the previous draft of the RFP that, especially for a nuclear waste shipping campaign of the magnitude contemplated under the NWPA, it is critical to promoting public acceptance for DOE, in consultation with states and tribes, to conduct a defensible route-specific analysis. This analysis must also take into account all appropriate mitigation measures. Based on the findings from such an analysis, DOE should select the primary routes to be

used from each reactor site to the federal storage facility and then make the use of such routes mandatory in the terms of the contracts issued.

The current RFP makes no provision for a DOE analysis of routes. Instead, the RFP calls on the RSC to prepare a Transportation Plan that "sets forth" proposed transportation routes. The RFP provides no requirements for the methodology by which the RSC is to set forth its proposed routes. As the Committee has previously stated, a private contractor, motivated primarily by profit and cost-efficiency, will be most likely to choose routes based solely on minimizing miles traveled, time in transit, and rail tariffs. Other risk factors such as accident rates, potential property exposure, transit through environmentally and culturally sensitive areas, emergency response times, difficult to evacuate populations, dangers posed by bridges and tunnels, inclement weather, high-hazards, and time-of-day transit restrictions are not likely to be adequately addressed, if they are considered at all. Designating routes in this fashion is unacceptable to western states.

The latest version of the RFP states that DOE will provide "selected portions" of the RSC Transportation Plans to parties through whose jurisdictions the SNF is to be transported and that DOE will "seek their comments on the Plan." (RFP, C-13) This attempt at involving states in the routing process is inadequate, and fails to address the central issue of concern to citizens in western states that the federal government, not a profit-driven private contractor, establish NWPA transportation routes using a defensible routing methodology. In this regard, the Committee again refers DOE to resolutions of the Western Governors' Association calling for DOE policy commitments to "develop responsible routing criteria and develop a sound methodology for evaluating optional mixes of routes and transportation modes." [Western Governors Association *Resolution 95-020* (adopted June 26, 1995) and *Resolution 93-003* (Originally Adopted June 22, 1993, Modified and Readopted June 24, 1996)] The Committee also questions why OCRWM would provide corridor states with only "selected portions" of the Transportation Plan of an RSC selected for Phase B work. (RFP, C-13)

The Committee also calls on DOE to heed the recommendations of the four regional cooperative agreement groups working within the Routing Topic Group of the DOE Transportation External Coordination Working Group (TEC/WG). These groups, including the WIEB High-Level Radioactive Waste Committee, the Council of State Governments' Midwestern High-Level Radioactive Waste Committee and Northeastern High-Level Radioactive Waste Transportation Task Force, and the Southern States Energy Board's Advisory Committee on Radioactive Materials, have called on DOE to "develop a standardized, cooperative approach to route selection for all unclassified shipping campaigns involving radioactive materials. As its model, DOE should use the route-selection process established for the Waste Isolation Pilot

Plant program..." [*Preliminary Regional Recommendations on Route Selection*, Developed at the TEC/WG Routing Subgroup Meeting, (January 20, 1998)]. In the WIPP program *DOE*, not the contractors, proposed preliminary routes to states and tribes, and included the final routes as mandatory provisions in its contracts.

In addition to the core problem in the RFP of placing primary route selection responsibility in the hands of a profit-driven private contractor, the Committee finds the RFP to be confusing and potentially contradictory regarding the timing of routing selection. Route selection is a prerequisite for implementing preparations for the safe and uneventful shipment of material under the NWPA. Under the current RFP, the time line chart on page C-3 shows Phase A-Planning being completed at least three years prior to shipment; Phase B - Acquisition and Mobilization taking three years and being completed just before shipments begin; and Phase C - SNF Acceptance and Transport initiating shipments upon the conclusion of Phase B.

While we realize that OCRWM may have a different interpretation of the requirements of the draft RFP, as evidenced by Dwight Schelor's discussion at the December 9-10, 1997 joint meeting of OCRWM's regional cooperative agreement groups, the plain reading of the document shows conflicting statements regarding the timing for routing decisions. For example, in Section 2.2.7 (p. C-13), the RFP states that the Phase A Transportation Plan "shall include...**guidelines for preparation of procedures during Phase B for: selecting primary and alternate routes** in accordance with applicable NRC and DOE regulations for all transportation modes selected." (Emphasis added) This implies that "guidelines" will be developed in Phase A, "procedures" will be developed in Phase B, and assumedly actual routes will be selected in Phase C. However, in Section 2.2.5.1 (p. C-10), the RFP states that the Purchaser Site Servicing Plans "...shall identify preliminary primary and alternate transportation routes and intermodal transfer sites (if required)." The Purchaser Site Servicing Plans are part of the Phase A deliverables which must be completed at least three years prior to shipment.

Of even greater concern to the Committee is the fact that under neither of the above interpretations of the RFP would states receive adequate time to prepare for the NWPA shipping campaign. Under the RFP, routes would not be selected in time for the orderly implementation of preparations under Section 180(c) of the NWPA or for states to make adjustments to highway routes under HM 164. As the Committee has stated on many occasions to OCRWM, failure to provide states and tribes with adequate lead time to prepare for shipments will jeopardize the safety of citizens along transportation corridors.

To allow for the cost-effective implementation of Section 180(c) of the NWPA, DOE must *finalize* its route selections *before* it can efficiently allocate funds to states and

tribes along a shipping route. By finalizing the routes prior to implementing the 180(c) program, states and tribes will also be able to focus limited training resources on the routes which will actually be used. As provided in multiple resolutions of the Western Governors' Association, DOE must not allow NWPA shipments through western states unless adequate funding and technical assistance under Section 180(c) has been made available to states and tribes at least three years in advance of shipments. [Western Governors Association *Resolution 97-015* (Adopted June 24, 1997) and *Resolution 96-019* (Adopted June 24, 1996) state that: "The Governors continue to insist that no shipments of spent fuel and high-level radioactive waste shall be made to storage facilities or a repository until DOE has identified shipping routes and Section 180(c) funds and assistance have been made available to states at least three years prior to the start of shipments, notwithstanding any sudden changes in DOE's shipping schedule."] This means that the routes for NWPA shipments must be finalized by DOE, in consultation with states and tribes, prior to the startup of Phase B in the RFP.

Additionally, experience has shown that the process for state designation of alternative highway routes under HM 164 is a time-consuming process involving extensive analysis and consultation with parties inside and outside a state. Under either of the interpretations of the language in the RFP there is insufficient time prior to shipment for the state route designation process to be completed and Section 180(c) assistance to be implemented along the state-designated alternate route. The difficulties and confusion evidenced in the RFP regarding the timing of activities to prepare for shipments needs to be eliminated.

The Committee strongly recommends that DOE issue another draft of the RFP that clearly lays out the Department's responsibility for the evaluation and selection of routes and establishes a time line for selecting routes which provides sufficient time for states to adjust highway routes, if necessary, and for Section 180(c) funds to be provided to corridor states and tribes three years in advance of shipments.

4) Preparation of an Environmental Impact Statement Including Transportation Issues

Western states continue to expect DOE to fulfill the promise made in Volume III of its 1986 Yucca Mountain Environmental Assessment, of conducting its own in-depth route and mode-specific analysis as part of the Yucca Mountain EIS. [*Environmental Assessment Yucca Mountain Site, Nevada Research and Development Area, Nevada, Volume III, (May 1986), p. C.2-37.*] The RFP states that "[a]ll requirements of the National Environmental Policy Act (NEPA) associated with the Environmental Impact Statement (EIS) for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain...will be completed by DOE prior to the implementation of Phase B." (RFP, C-3) The Committee requests

that a sentence be added to the RFP stating that "a comprehensive route and mode-specific analysis of transportation impacts will be included in the Yucca Mountain EIS."

5) Selection of a Transportation Cask

As the Committee stated in its comments on the previous draft of the RFP, the decision to select a transportation cask or cask system to be used in transporting NWPA shipments should be directly determined by the routing and modal analyses conducted by DOE. The current RFP, however, appears to leave the decision on cask selection almost entirely in the hands of the RSC. (RFP, Appendix C-2) The Committee believes that such an approach to cask selection is inefficient and improper.

After DOE has consulted with affected states and tribes and properly decided upon its preferred mode of transport, the RFP should be written to reflect this decision with regard to cask selection. If, for instance, DOE decides that rail is the preferred mode for the transportation of SNF/HLW, then this decision should be *clearly* and *consistently* reflected in the RFP by requiring the RSCs to focus their resources on the development and production of rail casks. In this instance, the RFP should stipulate that truck-compatible casks should only be developed to accommodate shipments for those facilities which are not rail accessible.

In addition, the Committee believes that the RFP should be amended to promote more uniformity in the casks used for NWPA shipments. As the Committee has previously stated to DOE, the benefits of such standardization have been touted by the Nuclear Waste Technical Review Board (NWTRB), which has recommended that DOE ensure the standardization of transportation casks, as would have occurred had the Department continued its Multi-Purpose Canister (MPC) development program. [*Report To The U.S. Congress and The Secretary of Energy, 1996 Findings and Recommendations*, U.S. Nuclear Waste Technical Review Board, (March 1997), p. 6.]

Pursuant to resolutions of the Western Governors' Association, as well as a joint resolution passed by three out of four of OCRWM's regional cooperative agreement groups, the Committee also continues to insist on the full-scale destructive testing of transportation casks. [Western Governors Association *Resolution 95-020* and *Resolution 93-003* both call for full-scale cask testing. A joint resolution on full scale cask testing (*Resolution 95-2*) was passed in 1995 at the First Joint Meeting of the Regional Radioactive Waste Transportation Committees, and was signed by the Council of State Governments' Midwestern High-Level Radioactive Waste Committee, the Southern States Energy Board's Advisory Committee on Radioactive Materials Transportation, and the Western Interstate Energy Board's High-Level

Radioactive Waste Committee.] The Committee recommends that as an integral component to the process for certifying spent fuel shipping casks, that the RSCs be required to conduct full-scale cask testing of the design and integrity of spent fuel shipping cask prototypes and shipping container systems, including sequential tests (free drop, puncture, thermal, and immersion). This requirement should be reflected in Appendix C-2 of the RFP as part of the mandatory cask design requirements.

6) Other Transportation Planning Activities

The Committee continues to believe that DOE should look to the WIPP program for guidance on conducting transportation planning activities for the NWP transportation program. This policy position has now also been adopted by DOE's three other regional cooperative agreement groups across the country. At the Second Joint Meeting of the Regional Radioactive Waste Committees held in December 1997 in Las Vegas, Nevada, the Council of State Governments' Midwestern High-Level Radioactive Waste Committee and Northeastern High-Level Radioactive Waste Transportation Task Force, and the Southern States Energy Board's Advisory Committee on Radioactive Materials Transportation reached consensus with the WIEB High-Level Radioactive Waste Committee that a document similar to the WIPP Transportation Safety Program Implementation Guide (the Guide) should be used as a base document for transportation planning for all of DOE's various radioactive waste transportation programs.

The transportation planning process outlined in the RFP does not meet the standards set by the WIPP program. Transportation planning for the WIPP program was conducted through meetings and negotiations between DOE and the affected states and tribes and included DOE commitments to produce a Transportation Plan and a Communications Plan. In addition, the results of these negotiations were embodied in the WIPP Guide, addressing such items as emergency response and the application of modern inspection, communication and tracking techniques. The contractors were then contractually bound by DOE to follow the provisions of the Guide. Such a process provides the dual benefits of: 1) promoting uniformity in critical transportation practices, which is especially necessary under the current RFP scheme where up to four separate contractors could be planning and executing NWP shipments; and, even more importantly, 2) placing the crucial overall transportation policy decisions under the control of the state and federal governments instead of a profit-driven private contractor.

In contrast, the current RFP would establish a process whereby the contractor develops its own Transportation Plan, Emergency Response Plan and a Communications and Outreach plan. As mentioned earlier, while the RFP allows for some input from "appropriate parties" on the Communications and Outreach Plan, the

Committee believes that this does not cure the basic deficiency that the contractor is given the primary responsibility for developing these types of planning documents. The Committee therefore recommends that the RFP be rewritten to conform to the consensus reached by all four of OCRWM's regional cooperative agreement groups by mandating that the RSC will be subject to the requirements contained within a transportation safety program implementation guide which is to be developed by DOE in consultation with affected states and tribes.

Other Comments

The Committee is concerned about the difficulties associated with western states and communities having to coordinate transportation preparations by as many as four RSCs. This may be particularly problematic because these RSCs are likely to be competitors and DOE mandates to cooperate may have limited effect on their behavior.

With the WIPP program, DOE invited states to participate in the process of choosing the transportation contractor. The Committee requests that states and tribes be similarly involved in DOE's RSC selection process for the OCRWM program. At a minimum, states and tribes should be invited by DOE to participate in the RSC selection process as observers.

The Committee supports the use of CVSA enhanced inspection requirements for highway shipments of SNF/HLW. In the last paragraph of section 1.3 (on page C-4) the Committee suggests changing the word "applicable" to "enhanced."

The only firm statement in the RFP requiring the notification of states of the routes to be used is on page C-5 wherein the RFP states that the RSC is to notify states in accordance with NRC regulations. NRC regulations require a carrier to provide states with only seven days notice of the shipment, clearly a timeframe which precludes any preparations.

The RFP does not make clear OCRWM's policy on intermodal transfers (e.g., p. C -5). Is it the agency's intent to pursue transfers from truck to rail near reactor sites wherever possible?

The Committee agrees with the policy stated in the RFP that "[a]ll Transportation Casks will be shipped full from the Purchaser's site (i.e., no empty compartments) even though a Purchaser's annual allocation may be exceeded." (RFP, C-11) The Committee believes this policy will help to minimize the number of shipments through western states.

With regard to the Quarterly Project Management Reviews called for in the RFP, the Committee believes that the language should be amended to read "[h]owever, personnel from other Federal government agencies, Purchasers, State, local, and Tribal governments, and other stakeholders *shall* be invited by DOE to attend the open portion of the meeting." (RFP, C-19) In addition, DOE should provide for the reimbursement for the travel costs of state, local and tribal officials who attend the Reviews.

The Committee agrees with the provision in the RFP that, unless authorized by DOE, an RSC shall not ship through a jurisdiction if the RSC becomes aware of a state, tribal, or local regulation concerning the transportation of radioactive materials which may conflict with federal regulations and which may be a candidate for preemption under the Hazardous Materials Uniform Safety Act. (RFP, C-26)

The HLW Committee is interested in OCRWM's rationale for paying the RSC for Communication and Outreach Core Hours as if they were to start to be expended in year B4. (p. C App.5-2). Will the RSC have any communications and outreach responsibilities prior to that year?